

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

L. T. TUCKER,

Plaintiff,

v.

CORIZON CORRECTIONAL
HEALTHCARE, INC., et al.,

Defendants.

Case No. 2:19-cv-170

HON. JANET T. NEFF

OPINION AND ORDER

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983. The claims remaining for resolution are Plaintiff's Eighth Amendment denial-of-medical-care claims. Defendants Anderson, Simpson, Haynes, Dutiel, and Turner, who are employees of the Michigan Department of Corrections (MDOC), filed motions for summary judgment, asserting that Plaintiff failed to exhaust his administrative remedies (ECF Nos. 47, 83 & 94). Plaintiff filed a motion for an extension of time to file a sur-reply to Defendants' reply brief (ECF No. 102) as well as a motion for a preliminary injunction and for a temporary restraining order (ECF No. 30). The matter was referred to the Magistrate Judge, who issued a detailed Report and Recommendation (R&R) on the motions. The matter is presently before the Court on Plaintiff's six objections to the Report and Recommendation. Defendants filed a response to Plaintiff's objections. In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections and issues this Opinion and Order.

Plaintiff's first three objections concern his argument that the Magistrate Judge "fail[ed] to follow the correct summary judgment standard due to Defendants' 'exhibits dumping'" (Pl. Obj., ECF No. 111 at PageID.1478-1483). In his fourth objection, Plaintiff makes the related argument that the Magistrate Judge committed an "oversight" in failing to accept the "factual alternative theories" set forth in Plaintiff's Amended Complaint (*id.* at PageID.1483-1484). Plaintiff's arguments lack merit. The Magistrate Judge set forth the correct standard for reviewing motions under Federal Rule of Civil Procedure 56 (R&R, ECF No. 108 at PageID.1437), and the Magistrate Judge carefully reviewed the record, including the more than 70 grievances at issue (*id.* at PageID.1442-1452).

In his fifth objection to the Report and Recommendation, Plaintiff argues that the Magistrate Judge made "erroneous" findings of fact in analyzing his motion for injunctive relief (Pl. Obj., ECF No. 111 at PageID.1484-1486). Plaintiff's argument lacks merit. The Magistrate Judge set forth the proper standard for analyzing motions under Federal Rule of Civil Procedure 65 (R&R, ECF No. 108 at PageID.1454-1455). The Magistrate Judge thoughtfully analyzed the relevant factors and ultimately concluded that the factors, on balance, did not demonstrate that Plaintiff was entitled to the injunctive relief he sought (*id.* at PageID.1455-1456).

Last, in his sixth objection, Plaintiff objects to the Magistrate Judge's recommendation to strike his sur-reply brief and opines that the sur-reply brief is "necessary" (Pl. Obj., ECF No. 111 at PageID.1487). Plaintiff's argument lacks merit. The Magistrate Judge accurately indicated that neither the Federal Rules of Civil Procedure nor this district's Local Rules provides for the filing of a sur-reply (R&R, ECF No. 108 at PageID.1433-1434, n.2). While Plaintiff disagrees with the Magistrate Judge's recommendation, his objection reveals no factual or legal error by the

Magistrate Judge in determining that a sur-reply was unnecessary to resolve the issues presented by the pending motions.

In sum, Plaintiff's objections are properly denied. Accordingly, this Court adopts the Magistrate Judge's Report and Recommendation as the Opinion of this Court. Therefore:

IT IS HEREBY ORDERED that the Objections (ECF No. 111) are DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 108) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that Plaintiff's sur-reply (ECF No. 77) is STRICKEN, and Plaintiff's motion for leave to file a sur-reply (ECF No. 102) is DENIED for the reasons stated in the Report and Recommendation.

IT IS FURTHER ORDERED that Defendants Anderson, Simpson and Haynes' motion for summary judgment (ECF No. 47) is GRANTED IN PART and DENIED IN PART as set forth and for the reasons stated in the Report and Recommendation.

IT IS FURTHER ORDERED that Defendant Dutiel's motion for summary judgment (ECF No. 83) is GRANTED IN PART and DENIED IN PART as set forth and for the reasons stated in the Report and Recommendation.

IT IS FURTHER ORDERED that Defendant Turner's motion for summary judgment (ECF No. 94) is GRANTED for the reasons stated in the Report and Recommendation.

IT IS FURTHER ORDERED that Plaintiff's official capacity claims against Defendants Simpson, Anderson and Dutiel are DISMISSED for the reasons stated in the Report and Recommendation.

IT IS FURTHER ORDERED that Plaintiff's motion for a temporary restraining order and preliminary injunction (ECF No. 30) is DENIED for the reasons stated in the Report and Recommendation.

Dated: March 18, 2021

/s/ Janet T. Neff

JANET T. NEFF
United States District Judge